

AUG 07 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTHA ELIA OLEA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-71117

Agency No. A79-287-510

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Administrative Appeals Unit

Submitted July 22, 2008<sup>\*\*</sup>

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Martha Elia Olea, a native and citizen of Mexico, petitions for review of the Administrative Appeals Unit's ("AAU") order dismissing her appeal from the former Immigration and Naturalization Service's ("INS") decision denying her

---

<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application for legal temporary residence as a Special Agricultural Worker (“SAW”) under 8 U.S.C. § 1160. We have jurisdiction to review the denial of a SAW application pursuant to 8 U.S.C. § 1160(e)(3). We will reverse a decision of the AAU where it abuses its discretion or makes findings that are contrary to clear and convincing facts contained in the record considered as a whole. *See Perez-Martin v. Ashcroft*, 394 F.3d 752, 758 (9th Cir. 2005); *see also* 8 U.S.C. § 1160(e)(3)(B).

The AAU did not abuse its discretion when it determined that Olea’s witness affidavits were of little probative value and did not establish Olea’s eligibility for relief in light of the government’s evidence that called into question her claim of employment by Cayetano Godina. *See Perez-Martin*, 394 F.3d at 759-60 (to overcome derogatory government evidence, an applicant must provide enough evidence to show qualifying employment “as a matter of just and reasonable inference”) (quoting 8 U.S.C. § 1160(b)(3)(B)(iii)).

Olea’s contention that the government denied her due process is not supported by the record. The relevant regulation states that the government shall attempt to secure employment records where, among other conditions, the applicant’s testimony credibly supports her claim. *See* 8 C.F.R. § 210.3(b)(4). Because Olea’s claim was refuted by her employer, the AAU’s determination that

she did not provide credible testimony is supported by the record, and 8 C.F.R. § 210.3(b)(4) did not require the government to attempt to secure her employment records.

**PETITION FOR REVIEW DENIED.**